THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:)   CHAPTER 13
)   CASE NO: 14-52959
)
Earl Van Pelt)
)
         DEBTOR(S))   ALAN M. KOSCHIK
)   BANKRUPTCY JUDGE
)
)   TRUSTEE'S MOTION FOR TURNOVER OR,
)   IN THE ALTERNATIVE, TRUSTEE'S
)   MOTION TO DISMISS CASE FOR BAD
)   FAITH PURSUANT TO 11 USC § 1307(c)
)

Now comes Keith L. Rucinski, the Chapter 13 Trustee, by and through counsel, and hereby moves this Court for an order pursuant to 11 USC § 542 requesting that either the debtor or the debtor's employer, Akron Public Schools, be directed to turnover proceeds from a terminal vacation payout and a payment for unused sick days in the amount of approximately $10,000.00. Alternatively, if the debtor fails to turnover all of the funds due to him from the Akron Public Schools, the Chapter 13 Trustee moves this Court to dismiss this case for bad faith, pursuant to 11 USC §1307(c). The Trustee states the following:

1. This Chapter 13 case was filed on or about November 10, 2014. Docket No. 1.
2. The debtor's monthly payments of $90.00 are current as of the date of this motion.

Motion for Turnover

3. It has been communicated to the Trustee that the debtor has retired from Akron Public School in December of 2014. Akron Public Schools has notified the Chapter 13 Trustee the debtor is owed a terminal vacation payout and a payment for unused sick days. The Trustee believes the debtor will receive proceeds in the approximate amount of $10,000.00.
4. Property of the debtor's estate is defined to include any interest in property that the estate acquires after the commencement of the case. 11 U.S.C. § 541(a)(7).
5. In this case, the debtor will receive cash proceeds from his former employer after commencement of the Chapter 13 case and will be required to turnover said funds to the Chapter 13 Trustee for the benefit of creditors pursuant to the plan.

Motion to Dismiss Case Pursuant to 11 USC § 1307(c)

6. Alternatively, if the debtor does not turnover the proceeds due to him from Akron Public Schools, the Chapter 13 Trustee moves the court for dismissal of this Court pursuant to 11 USC §1307(c) for cause based on the filing this chapter 13 petition in bad faith.
7. At the first meeting of creditors held on or about November 25, 2014, the debtor appeared and provided his JPMorgan Chase bank statements for his checking account for the month of October 2014. The bank statements indicated a withdrawal to cash for $4,000.00 on or about October 11, 2014 and another withdrawal to cash for $8,000.00 on or about October 25, 2014. When questioned about these transactions that occurred

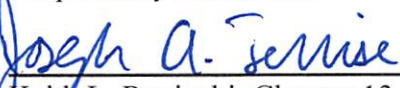within a few weeks of the filing of the chapter 13 petition, the debtor testified that he spent the funds gambling.

8. The debtor listed on his schedules $1,203.50 in secured debt, $3,700.00 in priority claims and $17,108.62 in unsecured debt.

9. The debtor's chapter 13 plan as currently proposed projects to pay all creditors $4,991.40 over five (5) years. Unsecured creditors would receive approximately $93.30 through the chapter 13 plan as currently proposed.

10. When taking into account the debtor's prepetition conduct of spending at least $12,000.00 on gambling just a few weeks before his filing of a chapter 13 plan which will pay creditors significantly less than $12,000.00 over a five (5) year plan period, the debtor has filed this chapter 13 petition in bad faith which is a basis for dismissal pursuant to 11 USC §1307(c). See In re Alt, 305 F.3d 413, 420 (6th Cir. 2002) (the court recognized that there is abundant authority to support a bankruptcy court's dismissal of a chapter 13 petition upon a finding that a debtor acted in bad faith, even for pre-petition conduct); see also Marrama v. Citizens Bank of Massachusetts, 549 U.S. 365, 127 S.Ct. 1105, 166 L. Ed. 2d 956 (2007) ("despite the absence of any statutory provision specifically addressing the issue, the federal courts are virtually unanimous that pre-petition bad-faith conduct may cause a forfeiture of any right to proceed with a Chapter 13 case.");

11. Furthermore, 11 U.S.C. § 1325(a)(7) requires that good faith in the filing of the petition be a condition to confirmation of a chapter 13 plan.

12. If the debtor turns over all funds due to him from the Akron Public Schools, the Chapter 13 Trustee will consider the motion to dismiss to be resolved. If the debtor does not turnover the funds the Trustee will move for dismissal of the case.

WHEREFORE, the Trustee moves this Court for an order to require Akron Public Schools to turnover approximately $10,000.00 from a terminal vacation payout and a payment for unused sick days due to the debtor or alternatively for the case to be dismissed for cause pursuant to 11 USC §1307(c) and for any other relief the Court deems just and proper.

Respectfully submitted,

Joseph A. Ferrise

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CERTIFICATE OF SERVICE

I hereby certify that on February 20 , 2015, a copy of the foregoing was sent to:

Earl Harris Van Pelt, Jr
1023 Austin Ave.
Akron, OH 44306
Debtor
(via Regular Mail)

Robert Whittington
Debtor's counsel
(via ECF @ robertwhittington0@gmail.com)

Akron Public Schools
ATTN: Christine Kaiser
70 N. Broadway, Room 105
Akron, OH 44308
Debtor's former employer
(via Regular Mail)

Amy Good, Esquire
Office of the US Trustee
 (via ECF at Amy.L.Good@usdoj.gov)

Keith L. Rucinski, Chapter 13 Trustee
(via ECF at **krucinski@ch13akron.com**)

Office of the Chapter 13 Trustee